

In re Patent Application of:

**MARTIN HERING**

Serial No. **09/705,152**

Filing Date: **11/02/2000**

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### Remarks

Applicants and the undersigned would like to thank the Examiner for his efforts in the examination of this application. In the above referenced Office Action, Claims 62, 64-66, and 86-90 were rejected under 35 U.S.C. 112, second paragraph, for failing to particularly point out and distinctly claim the invention, and rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2,068,323 to Harrison et al. in view of U.S. Patent No. 3,839,825 to Nica. Claim 62 is herein amended to more distinctly claim the subject matter that the Applicant regards as the invention and to more fully distinguish the claimed invention over the prior art. Claims 62, 64-66, and 86-90 remain in the case.

Amended Claim 62 is directed to use of a turnstile having an arm movable into and out of the passageway, wherein the arm includes at least a portion of an outside surface defined by a generally circular cross section. As supported by the specification as originally filed, such is and has been generally accepted as a viable turnstile embodiment and is used extensively in sports and other venues demanding crowd control. As indicated in the specification and earlier provided in application prosecution of related applications, turnstile advertising has not been successfully used for advertising until the present invention. Further, independent Claim 62 includes the feature of encircling a substantial portion of the arm outside surface defined by the generally circular cross section with a sleeve.

In contrast, Harrison '323 is a teaching away from use of any existing turnstiles and discloses adapting arms (3) for display (see Col 2, beginning Line 12) including downwardly projecting side walls (21), a central reinforcing rod (22), an inner end wall (21), and an outer end wall (24) as described with reference to FIGS. 3 and 5 of

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Harrison '323. Specifically, Harrison '323 does not disclose nor suggest employing a turnstile arm having a circular cross section nor encircling a substantial portion of the arm with a sleeve. Rather, Harrison '323 would have one of skill in the art believe that a new construction of a turnstile was necessary for use as a display (see Col 3, Line 12 by way of example).

With regard to U.S. Patent No. 3,839,825 to Nica, an improved turnstile is disclosed with the object of replacing damaged or worn arms and lessening the unauthorized removal of the arms (see Col 2, beginning Line 9 by way of example). Further, to esthetically enhance the appearance of the arms (see Col 6, beginning Line 27), a stainless steel sheath or sleeve (68) is disclosed as being desired. Nica '825 makes no suggestion for use of the arm in advertising. In fact Nica '825 is a teaching away from use of a transparent sleeve in attempting to enhance the appearance of the arm by providing a covering for over the arm (18). Respectively, there is no motivation to provide advertising.

It is only through the teachings of the Applicant that one of skill in the art would consider adding structure to an existing turnstile arm advertising therefrom. Respectively, by combining the teachings of Nica '825 and Harrison '323, as suggested, the resulting invention would not be that of nor suggest the claimed invention. Further, the success shown fro the invention, as evidenced by the earlier declarations submissions, cannot be overlooked. Such success is not nor has it been evidenced in the prior art, in spit of the teachings of the cited references. While one might inappropriately seek to locate each element in the prior art for a suggestion of obviousness, each element of the claimed invention has not been found, providing yet further evidence of non-obviousness to one of ordinary skill in the art.

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With regard to Claims 64-66 and 86-90, depending from Claim 62, the prior art again fails to teach or suggest additional features of the claimed invention. By way of example, Nica '825 fails to disclose or suggest a transparent sleeve, as identified in dependent Claim 64, which sleeve encircles a circular cross section portion of the arm (Claim 62) not disclosed, nor suggested in Harrison '323. Neither Nica '825 nor Harrison '323 discloses a collar called for in dependent Claim 65. There is no suggestion in Nica '825 to carry a sheet with indicia as called for in Claim 66. In fact, it is suggested that Nica '825 teaches away from such a device as earlier discussed. Harrison '323 does not disclose nor suggest a construction that includes the sleeve completely encircling the arm, as called for in dependent Claim 86, nor is there a suggestion in either Harrison '323 or Nica '825 to slide the sleeve on and off the arm for providing alternate indicia, as called for in Claim 87. Dependent Claims 89 - 90 add further features to the sleeve for further defining over the teachings in the art.

Attention is further directed to the Declaration Under 37 CFR 1.132 of Martin Hering earlier transmitted and entered in the case. In particular, it is clear that the present invention, as herein more clearly presented in amended independent Claim 62, has satisfied a need not met in the advertising industry. The testimonials of customers significantly support the claimed invention as meet a real need in the industry. Further evidence of success of the invention continues and can be made available to the Examiner at his request. Indeed, it can only be through hindsight that one of skill in the art would be able to provide the claimed invention of the Applicant.

Applicants and the undersigned would like to again thank the Examiner for his efforts and guidance in the examination of this application. Respectfully, it is now felt that the claims in the case are in a condition for allowance and passage to issue is requested. If the further prosecution of this application can be expedited through a

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telephone interview, the Examiner is asked to contact the undersigned at the Examiner's convenience.

Respectfully submitted,



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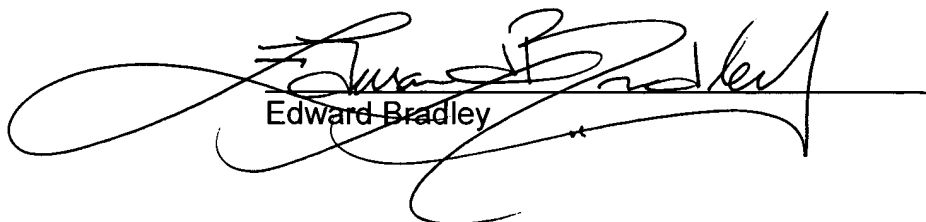
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**CERTIFICATE OF MAILING**

I hereby certify that the foregoing is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Commissioner of Patents, Alexandria, VA 22313-1450, this 9th day of December, 2003.



Edward Bradley